NO. 80-759

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ALBERTO SANCHEZ, et al.

Petitioners

vs.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1, et al.; UNITED STATES OF AMERICA; MARIA MENDOZA, et al., ROY and JOSIE FISHER, et al., and SIDNEY L. SUTTON, et al.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION BY RESPONDENTS ROY AND JOSIE FISHER, ET AL.

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Respondents Roy and Josie Fisher, et al., representing a class composed of all black students and parents of black students attending grades 1 through 8 in the Tucson Unified School District No. 1, respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Ninth Circuit's opinion in this case. That opinion is reported at 623 F.2d 1338.

STATEMENT OF THE CASE

The statement of the case set forth in the Petition filed on behalf of Alberto Sanchez, et al., is substantially at variance with the events as seen by each of the Respondents who participated substantively in the lengthy trial court proceedings in this case, including this Respondent, who represented the class of black plaintiffs below, as well as the Respondent School

District, which was a defendant below, the Mendoza, et al., Respondents, who represented the class of Mexican-American plaintiffs below, and the United States, which intervened on behalf of plaintiffs. In order to avoid duplication, we adopt by reference the statement of the case set forth in the Response submitted on behalf of Respondent Tucson Unified School District No. 1. The careful explication of the facts contained in the School District's Response--and especially the chronology of events leading up to the District Court's adoption of the plan of desegregation and subsequent approval of the settlement--provides the proper foundation for consideration of the several issues that Petitioners contend are worthy of review by this Court.

Before turning to those issues, we wish to add one prefatory note as representatives of all black elementary and junior

high school students in Tucson School District No. 1. As the Ninth Circuit correctly noted, the discovery, trial and ultimate settlement phases of this litigation were handled by the District Court on a consolidated basis. That is, separate school desegregation lawsuits filed first by representatives of the black student class, and subsequently by the Mexican-American student class, were brought together for a single pretrial and trial process. Nonetheless, as a matter of proper procedure, Petitioner Sanchez--as the court below stated--is "a party only to the [Mexican-American] case and his appeal is properly understood as an appeal only of [that] case." 623 F.2d at 1341n.1. It is, however, quite inaccurate to assume that Petitioners could obtain, in this Court, the relief they seek without having a direct impact on the class of black children now benefiting from a settlement that is now in its third year of operation. In

that regard, it is important to note that the Petition does not purport to challenge the legal correctness of the District Court's decision on the merits; the Petition does not contest the legal correctness of the plan of desegregation ordered by the court; and the Petition does not contest--on the merits--the propriety and fairness of the settlement. For the reasons that follow, we think the collection of procedural complaints that do provide the basis for the Petition are totally without merit, but we would ask this Court, in considering whether to exercise its discretionary prerogative to review this case by writ of certiorari, to consider whether those legal objections are sufficiently meritorious to justify setting aside the extensive desegregation and educational gains that black children in Tucson have already begun to enjoy under the desegregation plan and stipulation of settlement.

REASONS WHY THE WRIT SHOULD BE DENIED

We will address the five issues raised by Petitioner in the order in which they are set forth in the Petition.

I. Whether Notice by Publication and General Distribution Denied the Class Due Process of Law.

Petitioners argue that the District Court erred in ordering, and the Court of Appeals erred in affirming, a notice of proposed settlement that was disseminated through the local newspapers, broadcast media and through distribution at places within the School District where persons interested in the settlement might find it. Instead, Petitioners contend that the due process clause of the Constitution requires individual mailed notice "in any case where [interested persons'] identity and whereabouts are easily determined."

Petition, at 22. There are several reasons why this Court should not grant a writ of certiorari to consider this issue.

A. This Court's Decisions Do Not Support the Proposition Urged by Petitioners.

Petitioners place their principal reliance upon Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), and Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974). Neither case, nor any other decisions of this Court of which we are aware, supports the proposition that individual, mailed notice is required in every case. Mullane was not a class action case. Rather, it involved the propriety of notice by publication in a local newspaper of a judicial settlement of accounts by a trustee of a common trust fund. This was a proceeding directly affecting the pecuniary or property interests of each individual

member of the class of beneficiaries, a case quite different from a class action of the type involved here where only class-wide structural relief was requested. The Court was careful to note that it was not establishing in Mullane any inflexible rule with respect to notice:

> "The Court has not committed itself to any formula achieving a balance between these interests in a particular proceeding or determining when constructive notice may be utilized or what test it must meet. Personal service has not in all circumstances been regarded as indispensible to the process due to residents . . . . We disturb none of the established rules on these subjects."

99 U.S. at 314. Stated simply, nothing in the Mullane opinion purports to lay down the inflexible rule urged upon this Court by Petitioners.

Neither does Mr. Justice Powell's Eisen opinion stand for the proposition urged

here. The Court in that case was careful to rest its holding on a reading of Rule 23(c)(2) of the Federal Rules of Civil Procedure. While the Court did hold that this Rule "required that individual notice be sent to all class members who can be identified with reasonable effort," the Court was quite clear in limiting the scope of its holding to so-called (b)(3) class actions:

> "We are concerned here only with the notice requirements of subdivision (c)(2), which are applicable to class actions maintained under subdivision (b)(3). By its terms subdivision (c)(2) is inapplicable to class actions for injunctive or declaratory relief maintained under subdivision (b)(2)."

Id. at 177 n.14. In a case decided during the following Term, Sosna v. Iowa, 419 U.S. 393 (1975), the Court reiterated the limited extent of its Eisen opinion. In Sosna--as in this case--the class action sought injunctive and declaratory relief

rather than a monetary recovery. Because the class involved was a so-called (b)(2) class, "the problems . . . which were considered by this Court last Term in Eisen . . . are not present in this case." 419 U.S. at 397 n.4. In short, neither Mullane nor Eisen addresses the question of notice to members of a class seeking declaratory and injunctive relief.

B. There is No Conflict Among the Circuits; the Cases Uniformly Support the Conclusion that Neither Rule 23 Nor the Due Process Clause Requires Individual, Mailed Notice in Every Case.

The question whether individualized notice is required in class actions brought to obtain injunctive and declaratory relief has been considered now by virtually every Circuit. Every case we have found, and there are a good many of them, concludes that the individualized notice called for in Eisen is not required where the action

is one brought under Rule 23(b)(2). This is the unanimous view of virtually all of the Circuits. See, e.g., Yaffe v. Powers, 454 F.2d 1362 (1st Cir. 1972); Frost v. Weinberger, 515 F.2d 57, 65 (2d Cir. 1975); Wetzel v. Liberty Mutual Ins. Co., 508 F.2d 239, 254-57 (3d Cir. 1975), cert. denied, 421 U.S. 1011 (1975); Gilbert v. General Electric Co., 519 F.2d 661, 667-68 (4th Cir. 1975), rev'd on other grounds, 429 U.S. 125 (1976); Grigsby v. North Mississippi Med. Center, Inc., 586 F.2d 457, 461 (5th Cir. 1978); Alexander v. Aero Lodge No. 735, 565 F.2d 1364, 1373 (6th Cir. 1977), cert. denied, 436 U.S.. 946 (1978); Bijeol v. Bison, 513 F.2d 555, 558 n. 3 (7th Cir. 1975); Elliott v. Weinberger, 564 F.2d 1219, 1228-29 (9th Cir. 1977), mod. sub. nom. on other grounds, 442 U.S. 682, 687 (1979); ; Ryan v. Shea, 525 F.2d 268, 275 (10th Cir. 1975); Larionoff v. United

States, 533 F.2d 1167, 1184 (C.A.D.C. 1976), aff'd, 431 U.S. 864 (1977). Prior to Eisen, it appeared that courts of appeal in three circuits might have been inclined to hold individualized notice to be required generally under Rule 23, but each of those circuits in cases decided subsequent to Eisen has now rejected that conclusion. Compare Frost v. Weinberger, supra, with Eisen v. Carlisle and Jacquelin, 391 F.2d 555, 564-65 (2d Cir. 1968); and compare Alexander v. Aero Lodge No. 735, supra, with Zeilstra v. Tarr, 466 F.2d 111, 113 (6th Cir. 1972); and compare Bijeol v. Benson, supra with Schrader v. Selective Service System, 470 F.2d 73, 75 (7th Cir.), cert. denied, 409 U.S. 1085 (1972). Thus, whatever controversy might be thought to have existed has--to quote Judge McGowan's recent conclusion after reviewing some of the cases cited above--"diminished considerably after the Supreme

Court's decisions in Eisen . . . and Sosna . . . ." Larionoff v. United States, 533 F.2d at 1184.

Although Petitioners do not cite any of these cases, they allege that there exists a "division of authority among the circuits." Petition, at 20. The only case cited by Petitioners is Armstrong v. Board of School Directors, 616 F.2d 305 (7th Cir. 1980). That case, however, does not deal with Mullane, Eisen or any of the other lower court cases that have addressed the (b)(2) notice requirement. The only possibly relevant language in that opinion is a reference, in dictum, to the requirement of Rule 23(e) that the settlement of school desegregation cases (as well as other class action suits) may not proceed "without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all the members of the class in

such manner as the court directs." Fed. R. Civ. P. 23(e). But the opinion does not talk about the manner of notice and does not suggest that notions of due process or the detailed requirements of Rule 23 impose a duty of individualized, mailed notice. 616 F.2d at 313. There is, therefore, no basis for asserting the existence of a conflict among circuits.

In any event, in light of the cases cited above, it cannot fairly be argued that any Circuit, including the Seventh Circuit, has adopted a rule requiring individual notice in (b)(2) cases. Surely, if a class action of this type can be maintained and brought to judgment on behalf of the class without individual notice to the class members, such an action can be settled without individual notice.

C. Due Process Does Not Require the Court to do More Than it Did in This Case.

Several courts of appeal have assessed the due process requirements that apply in ascertaining what notice is required where the underlying action seeks injunctive or declaratory relief. See, e.g., Wetzel v. Liberty Mutual Ins. Co., 508 F.2d at 254-57; Griggs v. North Mississippi Med. Center, Inc., 586 F.2d at 461; Alexander v. Aero Lodge No. 735, 565 F.2d, at 1373-74; Laionoff v. United States, 599 F.2d at 1184-87. The discussions in each of these cases focuses on the touchstone of due process in an injunctive action as articulated by Mr. Justice Harlan Fiske Stone in Hansberry v. Lee, 311 U.S. 32, 42 (1940). Due process is satisfied if the procedure adopted "fairly insures the protection of the interests of absent parties who are to be bound." In each of these cases, the

courts of appeal rejected the argument that due process necessarily requires individualized notice of the pendency of the action.

This, then, is the proper focus: Did the procedure followed by the District Court reasonably insure that the interests of absent parties would be adequately protected? When the issue is postured in this fashion, there can be little question about the sufficiency of the form of notice utilized in this case. After all, adequacy of representation of the class is a mandatory requirement for the maintenance of a class action under Rule 23. The District Court, in this case, certified that the named plaintiffs did adequately represent the class of Mexican-American public school children attending school in Tucson School District No. 1. Moreover, during the course of the litigation, the District Court was asked to reconsider its earlier

decision and, instead, recertified the class as representative of the interests of all class members. Finally, after the District Court rendered its opinion and findings of fact and conclusions of law, Petitioners sought the establishment of a subclass within the Mexican-American class, alleging that their views were not adequately represented by the class representatives. The Court denied Petitioners' request. None of these rulings are challenged by Petitioners in this Court.

Any question about the adequacy of the representation of the views of the members of the Mexican-American class at the remedial stage should be satisfied by a consideration of the manner in which the District Court allowed full amplification of the issues that might arise either out of the implementation of the desegregation plan or the settlement. The steps taken by the

District Court are set forth in the Response submitted to this Court by the School District and need be only briefly summarized here. Hearings were held in advance of the approval of the plan and of the settlement. At each of those hearings, interested citizens were invited to appear and testify. At each of those hearings, Petitioners, and others who shared their views, were given a full opportunity to address the court, and counsel were given an opportunity to examine and cross-examine witnesses about those issues. Both of the questions as to which Petitioners say the class notice was inadequate were fully addressed and were treated by the District Court in its orders approving the plan and the settlement. Nowhere has it been suggested, nor on this record do we think it could be suggested, that any particular concern of Petitioners (including, specifically, the issues with respect to school

closings or dismissal of counts in the Mexican-American complaint) were not fully addressed. In sum, there is no basis on this record for contending that the manner of notice given failed in any way to afford protection of the interests of absent class members.

The approach to notice articulated in Hansberry, and as developed in the several courts of appeal decisions cited above, provides a sensible framework. By its very nature, a class action that seeks injunctive and declaratory relief from a public entity will necessarily have an impact on a class of people broader than the named plaintiffs. As a practical matter, those persons who are affected by the judgment of the court cannot "opt out" of the affected class. Since the judgment will affect their interests, any notice must be tailored to assure that the court will have

before it a full development of the views of the members of the affected class. As the Court of Appeals stated: "In a class action seeking a structural injunction, notice is intended to encourage those with divergent views to come forth, helping the trial court to identify possible inadequacies in the settlement." 623 F.2d at 1351. Petitioners do not contend, and we think could not contend, that the trial court in this case was deprived of the opportunity to hear a full range of the views of all interested parties. Expensive and time-consuming individual notice by mail of the proposed settlement would not have changed the issues before the District Court or added any material input to the decision-making process. Under the circumstances, we do not think it can be fairly contended that the District Court abused its discretion in deciding to authorize

notice by publication in local newspapers and through the broadcast media, supplemented by notice given in other ways. See Note, Developments in the Law--Class Actions, 89 Harv. L. Rev. 1318, 1566 (1976). This was the last phase of a protracted lawsuit that had regularly received wide coverage in the press and electronic media. No one familiar with the often vocal and extensive exchanges during the hearings on the settlement plan and the desegregaton plan could reasonably contend that all aspects of the case, the settlement and the plan were not being properly presented and considered.

Indeed, to impose an inflexible, blanket requirement of individual notice by mail or otherwise in all actions involving Rule 23(b)(2) structural settlements would, we think, effectively preclude settlements in numerous instances because of the logistical impracticability and the financial

burden associated with such a form of notice where, as here, the class members number in the tens of thousands. Given the nature of the issues and the relief sought in such actions, it surely cannot be said that due process principles require such an inflexible and sometimes anamolous rule.

Because there is no conflict among the Circuits and because the due process principles are well developed and understood and because they were fully satisfied and addressed here, we think the petition for writ of certiorari should be denied.[1/]

[1/] It should be noted that the due process analysis embraced by the courts cited above is the same analysis embraced by the Advisory Committee in its consideration of the proposed revisions to the Federal Rules of Civil Procedure in 1966. See 39 F.R.D. 69, 106-07 (1966). It is also the approach recommended by the authors of the two major treatises on Rule 23. See 7A Wright & Miller Federal Practice & Procedure § 1786 (1972); 3B Moore, Federal Practice § 23.55 (1980).

II. Whether Notice Omitting Specific Reference to School Closures Denied the Class Due Process of Law.

What has been said above disposes as well, we think, of this issue. Two points should be remembered. First, as explained in detail in the Response submitted by the School District, the question of school closures was fully considered. Petitioners had an opportunity to address the District Court with respect to those closures, and did so. Second, the issue of school closures was considered by the District Court in its review of the desegregation plan. The District Court disposed of that issue, and it was, therefore, not open to renewed debate merely because reference to the plan was made in the subsequent settlement of the remaining issues in the litigation. In any event, this question presents no issue of overriding importance beyond the facts of this particular case. Nor is

there any reason to believe that even if Petitioners were successful in obtaining a remand of this matter to the District Court the school closures issue would be resolved in any way different from which it has been resolved. The question of school closure was extensively debated and ultimately resolved. The schools in question have now been closed for more than two years, and there is no reason on this record to expect that that decision was improperly reached or should be reconsidered.

III. Whether Notice Omitting Reference to Dismissal of the Quality of Education Counts in the Mexican-American Complaint Denied the Class Due Process.

What has been said above disposes of this issue as well. No question worthy of this Court's consideration is presented here. The question of dismissal of the so-called "quality of education counts" was fully considered by the District Court, and

no claim has been made (nor do we think one could be made) with respect to the adequacy of the representation offered by the Mexican-American plaintiffs on this issue. The notice of settlement of this class action satisfied fully the requirements developed in the controlling lower court cases. It presented "a fair recital of the subject matter and proposed terms" of the settlement. Marshall v. Holiday Magic, Inc., 550 F.2d 1173, 1177 (9th Cir. 1977). See also Grunin v. International House of Pancakes, 513 F.2d 114, 112 (8th Cir. 1975), cert. denied, 423 U.S. 864 (1976). As the Court of Appeals correctly concluded, "the notice generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." 623 F.2d at 1352. Although the notice itself did not contain--and

could not have contained--a detailed description of all of the terms of the settlement, it did advise interested parties where a full description of the stipulation of settlement could be obtained, and any questions that any interested class member may have had concerning the settlement could have been cleared up merely by obtaining a copy of that stipulation. Moreover, the District Court was aware at the time of the settlement hearing, as was class counsel, that the "quality of education counts" were essentially mooted by intervening events, and thus there is nothing of substantive significance to this claim by Petitioners. Under the circumstances, we believe there is no issue here worthy of consideration by this Court.

IV. Whether Inclusion of Attorneys' Fees and Reimbursement of Costs to Class Counsel in the Stipulation of Settlement Necessarily Renders the Settlement Unfair.

Petitioners' argument that the settlement of the remedial issues in the District Court is inherently unfair because the School District agreed to pay class counsel a sum for attorneys' fees and reimbursement of costs as part of the settlement is both factually and legally without merit, and certainly, under the circumstances of the instant case, does not warrant review by this Court.

As a preliminary matter, it is important to note that class counsel were entitled to the recovery of attorneys' fees and the reimbursement of costs as a result of the District Court's Decision and Order of June 5, 1978, establishing liabilty on the part of the School District. Bradley v. School Board of Richmond, 416 U.S. 696 (1974); 20 U.S.C. § 1617; 42 U.S.C

§ 1988. At the settlement hearing, class counsel introduced into evidence attorneys' time records and expense reports in support of the fees and costs to be paid by the School District under the stipulation of settlement. No objection was ever made to these exhibits, and no argument was ever presented, or indeed could have been presented, that the fees and costs were excessive or unwarranted. Nonetheless, the District Court fully considered this issue and even observed that class counsel had expended a total of more than eleven thousand hours in the course of the litigation. (Transcript of Trial Court Proceedings, Vol. V, August 31, 1978, p. 916.)[2/]

[2/]The District Court also stated:

> "[T]he representation as to the hours shown in that exhibit appear to be in keeping with some of my earlier comments here today [that] the time and effort expended

More importantly, the record adequately reflects that the attorneys' fee and cost provision was included in the stipulation of settlement at the request of the School District, that it was negotiated and included as the last item after all other aspects of the settlement had been agreed upon, and that no concessions were made in the course of settlement negotiations in return for attorneys' fees. Indeed, the letters passing back and forth between class counsel and counsel for the School District during the settlement discussions indicate clearly that payment of attorneys' fees and reimbursement of costs was discussed "in response to [the School Distict's] request. Moreover, these

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Footnote No. 2 Continued:

> on this case . . . have been fantastic. It doesn't appear that any stone has been unturned." (Transcript of Trial Court Proceedings, Vol. IV, August 30, 1978, p. 740.)

letters indicate clearly that class counsel sought to divorce the attorneys' fee question from the stipulation of settement, but were unable to do so. As the letter of July 19, 1978 (Petitioners' Appendix T)[3/] states:

> "With respect to attorneys' fees and costs . . ., we would like to state at the outset that we do not believe that these matters should preclude a settlement." (July 19 letter at p. 3.)

Class counsel then goes on to state in that same letter:

> "As pointed out above, . . . we do not believe that [the attorneys' fee] issue should preclude a settle-

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[3/]These letters were produced to Petitioners' attorneys prior to the settlement hearing but were never admitted in evidence. Nevertheless, they were submitted to the Court of Appeals in Petitioners' Excerpt of Record, have been submitted to this Court in Petitioners' Appendix, and have been extensively referred to and quoted in Petitioners' Petition. We think, therefore, that reference to these letters in this Response is both necessary and appropriate.

> ment. Thus, if the [School] Board is unwilling to reconsider its [original] offer, we suggest that a viable alternative might be to divorce this issue from our current settlement discussions and submit the issue of recovery of attorneys' fees and costs to Judge Frey under traditional recovery principles in cases such as this." (July 19 letter at p. 4.)

In short, we think the record indicates that the inclusion of the attorneys' fee provision in the stipulation of settlement did not in any way compromise the interests of the class and does not render the settlement unfair to Petitioners or other members of the Mexican-American class. The School District sought agreement on attorneys' fees and costs as part of its desire to resolve <u>all</u> remaining aspects of the lengthy litigation. Without the inclusion of that provision in the settlement agreement, a settlement may not have taken place and the classes would have then been

deprived of the extensive benefits that flowed from the settlement. Under those circumstances, the Court of Appeals was quite correct, we think, in finding that the District Court acted properly in approving the settlement with the attorneys' fees and costs provision included.

In any event, all of the courts of appeal that have addressed this issue agree that the inclusion of attorneys' fees in a settlement agreement does not necessarily render a settlement unfair or invalid. In re General Motors Engine Interchange Litigation, 594 F.2d 1106, 1131 (7th Cir. 1979), cert. denied, 444 U.S. 870 (1979); Prandini v. National Tea Co., 557 F.2d 1015, 1017 (3rd Cir. 1977). And this should be particularly true where, as here, the attorneys' fees are not a part of a negotiated settlement fund which might arguably be diminished to the extent of the

fees paid to class counsel. Moreover, the courts agree, as did the Ninth Circuit in this case, that where a government agency that has no stake in the attorneys' fee issue participates in the settlement negotiations and other proceedings leading up to the settlement, as did the United States Department of Justice in the instant case, that participation serves to protect the interests of the class against possible improper dealings and is to be given great weight in assessing the fairness of the settlement. Marshall v. Holiday Magic, Inc., 550 F.2d 1173, 1178 (9th Cir. 1977); Note, Developments in the Law--Class Actions, supra, 89 Harv. L. Rev. 1318 1563 (1976).

Stated simply, there is no reason for this Court to impose a blanket rule invalidating class settlements that encompass attorneys' fees and costs, there is no

evidence of unfairness or impropriety as a result of the inclusion of the attorneys' fees and costs provision in the stipulation of settlement in the instant case, and there is no reason for this Court to review the matter anew in light of the close scrutiny and consideration given to it by the Court of Appeals and the District Court below.

V. Whether the Two-Fold Hearing Approach Used by the District Court in the Instant Case to Consider Objections to the Proposed Remedial Plan of the School District and Separate Objections to the Settlement of Other Issues Denied the Class Due Process.

The Responses submitted by the School District, the United States and the Mexican-American Plaintiffs address this issue in some depth, and we therefore adopt the discussions set forth in those Responses as our response to this issue.

Suffice it to say, however, that this issue, as raised by Petitioners, is based

largely on erroneous assumptions and factual mischaracterizations. The hearings held by the District Court gave Petitioners and the classes in general a full and complete opportunity to present evidence and make arguments in opposition to the plan of desegregation and the settlement of remaining issues. In any event, the opinion of the Court of Appeals indicates that this issue was thoroughly examined and discussed below, and there is, therefore, no need for this Court to further review the issue, particularly since the issue has no particular significance outside of the peculiar facts of this case.

CONCLUSION

For these reasons and for the reasons set forth in the Responses of the School District, the United States and the

Mexican-American Plaintiffs, the Petition for Writ of Certiorari should be denied.

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CERTIFICATE OF SERVICE BY MAIL

I am a citizen of the United States, am employed in the County of Maricopa, State of Arizona, in the offices of Martori, Meyer, Hendricks & Victor, A Professional Association, and am a member of the bar of this Court. My business address is Thirty-Fifth Floor, Valley Center, Phoenix, Arizona 85073. On January 5, 1981, I served the within:

BRIEF IN OPPOSITION BY RESPONDENTS
ROY AND JOSIE FISHER, ET AL.

in said action by placing three copies thereof, enclosed in a sealed envelope with postage thereon full prepaid, in a United States Post Office mail box at Phoenix, Arizona, addressed as follows, in accordance with Rule 28 of the Rules of the United States Supreme Court:

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Exectued on January 5, 1981, at Phoenix, Arizona. I certify under penalty of perjury that the foregoing is true and correct.

Wm J. Maledon
WILLIAM J. MALEDON